

REMARKS

Reconsideration of this application and entry of this Amendment is respectfully requested.

Claims 2-5, 7-18, 22, 24-26, 28, and 32-38 are now pending in this patent application.

Independent claims 35 and 36 have been amended to more precisely recite the claimed invention. Support for these amendments can be found in the application on page 3, lines 17-18; page 7, lines 5-7; page 2, lines 16-21; page 1, lines 3-7 (titles included); and page 8, lines 12-13. Claims 37 and 38 have been amended to replace "wax-like material" with -- shellac wax-- and to change the wording for the weight percent of the cosmetically acceptable emulsifier to "amounts less than about 2.5 wt %". No new matter has been added.

Applicants reserve the right to file a continuing application to seek broader coverage for the "wax-like material."

The rejection of claims 2-18, 22-27, 28 and 30-38 under the first paragraph of 35 USC § 112 based on a written description rejection is believed obviated in view of the aforementioned amendments to the claims.

The rejection of claims 2-18, 22-27, 28 and 30-38 under the first paragraph of 35 USC § 112 based on new matter is believed obviated in view of the aforementioned amendments to the claims.

The rejection of claims 35 and 36 under 35 USC § 102(b) as anticipated by U.S. 6,264,933 to *Bodelin et al* is respectfully traversed.

In order to anticipate a claim, the reference must contain every element and limitation of the claimed invention, arranged as in the claim (*Brown v. 3M*, 265 F. 3d 1349, 60 USPQ2d 1375 (Fed Cir 2001)). *Bodelin* does not fulfill this requirement.

The Examiner refers to examples 1-4, which appear at columns 10 and 11 of *Bodelin* and maintains that "wheat protein hydrolysate" reads on the claimed keratin conditioning agent. Applicants respectfully disagree. *Bodelin*'s wheat protein hydrolysate component appears to exist only in Examples 1 and 2, and in an amount equivalent to about 0.18 weight % of the total composition. This amount does not approach the 0.5 weight % lower limit of the keratin conditioning agent claimed by applicants. Examples 3 and 4 do not appear to contain a keratin conditioning agent.

In addition, applicants' claimed composition is readily washed off. In contrast, *Bodelin*'s composition is waterproof (column 1, lines 46-48), and thus, not readily removable by washing in water.

Numerous other deficiencies of *Bodelin* were also discussed on pages 9-10 of applicants' October 2, 2007 Amendment, and are incorporated by reference herein. It is respectfully submitted that there is no basis under 35 USC § 102 or 103 for *Bodelin* to anticipate or make obvious the claimed invention. Accordingly, reconsideration and withdrawal of this ground of rejection is respectfully requested.

The rejection of claims 35-36 under 35 USC § 102(b) as anticipated by U.S. 6,274,131 to *Piot et al* is respectfully traversed.

The Examiner refers to examples 1-2 and 6-8. It appears that the "*wheat protein hydrolysate*" component referred to by the Examiner exists only in Examples 1, 2 and 8. None of the Examples in *Piot* contain wheat protein hydrolysate in a weight % in the range claimed by applicants.

In addition, applicants' claimed composition recites about 1-10 weight % of at least one soft wax component. As noted in applicants' previous October 2, 2007 Amendment, the claimed composition is a long-wear, water-based conditioning formulation that is gentle to the hair and requires a soft wax material. In contrast, *Piot*'s mascara composition is a wax-in-water emulsion of hard waxes (column 1, lines 43-67), whereas applicants' claimed invention is a oil-in-water emulsion of soft waxes.

It is respectfully submitted that there is no basis under 35 USC § 102 or 103 for *Piot* to anticipate or make obvious the claimed invention. Accordingly, reconsideration and withdrawal of this ground of rejection is respectfully requested.

The rejection of claims 35-36 under 35 USC § 102(b) as anticipated by U.S. 5,053,221 to *Robertson et al* is respectfully traversed.

Robertson's composition does not contain waxes or fibers (column 1, lines 22-24). As already noted, soft waxes are an essential component of applicants' claimed invention. In addition, *Robertson* does not include oils in his mascara composition (column 1, lines 41-44).

Applicants' claimed invention is an oil-in-water emulsion of soft waxes. *Robertson* does not disclose an oil-in-water emulsion and does not disclose each and every

element of the claimed invention. Therefore, reconsideration and withdrawal of this ground of rejection is respectfully requested.

In view of the above Amendments and Remarks, it is respectfully submitted that this application is now in condition for allowance and such favorable action is respectfully requested.

Respectfully submitted,

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